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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 KYLE LYDELL CANTY,

10 Plaintiff,

Case No. C16-1655-RAJ-JPD

11 v.

REPORT AND RECOMMENDATION

12 KING COUNTY, *et al.*,

13 Defendants.

14 INTRODUCTION AND SUMMARY CONCLUSION

15 This is a *pro se* civil rights action proceeding under 42 U.S.C. § 1983. Plaintiff Kyle
16 Canty has been granted leave to proceed with this action *in forma pauperis*. Service has not been
17 ordered. This Court, having reviewed plaintiff's original complaint, his first amended complaint,
18 his responses to the Order to Show Cause, and the balance of the record, concludes that plaintiff
19 has failed to state a cognizable ground for relief in this action. This Court therefore recommends
20 that this action be dismissed, without prejudice, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

21 DISCUSSION

22 Plaintiff Kyle Canty is currently confined at the King County Jail in Seattle, Washington
23 where he is awaiting trial in King County Superior Court on charges of felony harassment and

1 assault in the third degree. On October 24, 2016, plaintiff presented to this Court for filing a
2 civil rights complaint under 42 U.S.C. § 1983 in which he alleged a series of claims, all
3 apparently related to his ongoing criminal case. (Dkt. 1.) Specifically, plaintiff alleged that: (1)
4 the King County Prosecutor's Office filed charges against him without having probable cause;
5 (2) the Seattle Police Department engaged in misconduct by making up lies about him; (3) his
6 speedy trial rights have been violated; (4) the prosecutor had him sent to Western State Hospital
7 in retaliation for him taking his case to trial; (5) the prosecutor and the court refused to allow him
8 to subpoena witnesses; (6) the prosecutor and the court refused to open his court proceedings to
9 the public; and (7) the prosecutor and the court prevented him from filing motions alleging
10 constitutional violations in the superior court. (*See* Dkt. 1-1 at 3, 5.)

11 Plaintiff identified King County, the Seattle Police Department, the City of Seattle, and
12 the State of Washington as defendants in his complaint. (*See id.* at 1-3.) Though not entirely
13 clear, plaintiff appeared to seek release from custody, dismissal of his criminal charges, and \$60
14 million in damages. (*See id.* at 4.)

15 After reviewing plaintiff's complaint, this Court determined that plaintiff had not stated a
16 claim upon which relief could be granted in this civil rights action. Thus, on November 4, 2016,
17 the Court issued an Order directing plaintiff to show cause why this action should not be
18 dismissed. (Dkt. 6.) Plaintiff was advised in the Order to Show Cause that the claims asserted in
19 his complaint were all inextricably intertwined with his pending state court criminal proceedings,
20 and that federal courts will generally not intervene in a pending state court criminal proceeding
21 absent extraordinary circumstances where the danger of irreparable harm is both great and
22 immediate. (*Id.* at 2, citing *Younger v. Harris*, 401 U.S. 37 (1971)). Plaintiff was further
23 advised that his complaint did not reveal any extraordinary circumstances which would appear to

1 justify this Court's intervention in his ongoing state court criminal proceedings. (Dkt. 6 at 2.)

2 Plaintiff was granted thirty days to file a response to the Order to Show Cause. (*Id.*)

3 On November 14, 2016, the Court received a letter from plaintiff explaining that he had
4 prepared an amended complaint for filing prior to having received the Court's Order to Show
5 Cause. (Dkt. 7.) The Court received plaintiff's first amended complaint the following day.
6 (Dkt. 8.) Plaintiff alleges in his amended complaint that: (1) he was illegally taken into custody
7 by the Seattle Police Department ("SPD") on July 8, 2016 and was detained at Harborview
8 Medical Center ("HMC") pursuant to RCW 71.05.153 and RCW 71.05.180, statutes governing
9 the involuntary detention of individuals with mental disorders; (2) he was unlawfully arrested a
10 second time by SPD on July 13, 2016 upon his release from HMC; (3) he was illegally
11 interrogated by SPD while being transferred from HMC to jail via ambulance; (4) a probable
12 cause hearing was unlawfully held without plaintiff being present or any lawyer appearing on his
13 behalf; (5) he was improperly charged with felony harassment; (6) the bail amount set by the
14 court is excessive; (6) he has been denied stand-by counsel; (7) he has filed motions in his
15 criminal proceedings which have been illegally denied; (8) he has been denied a speedy trial; (9)
16 he was set-up by SPD so that he can't legally own a firearm; (10) he has been subjected to
17 multiple prosecutions for the same alleged crime; and (11) defendants are trying to convict him
18 based on false information. (Dkt. 8.)

19 Plaintiff maintains that these alleged unlawful actions by defendants have violated his
20 rights under the First, Second, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments. (*See*
21 *id.*) Plaintiff identifies the same four defendants in his amended complaint as were named in his
22 original complaint, and he appears to seek relief in the form of damages and an injunction to halt
23 the current criminal prosecution. (*Id.* at 24-25.)

1 On November 16, 2016, the Court received from plaintiff two apparent responses to the
2 Order to Show Cause. (*See* Dkt. 9 at 1-3 and 4-6.) Plaintiff asserts in his first response to the
3 Order to Show Cause that extraordinary circumstances justify this Court's intervention in his
4 ongoing criminal proceedings, though he appears to rely on the same arguments asserted in his
5 complaints regarding the constitutionality of the current criminal prosecution. (*Id.* at 1-3.)
6 Plaintiff asserts in his second response that his first amended complaint cures the deficiencies in
7 his original complaint and that this case should therefore not be dismissed. (*Id.* at 4-6.)

8 Neither plaintiff's amended complaint, nor his responses to the Order to Show Cause,
9 satisfy the Court that this action should be permitted to proceed. It remains the case that the
10 claims asserted in this civil rights action are inextricable intertwined with plaintiff's ongoing
11 state court criminal proceedings. As was explained in the Court's Order to Show Cause, federal
12 courts will generally not intervene in a pending state court criminal proceeding absent
13 extraordinary circumstances where the danger of irreparable harm is both great and immediate.
14 *Younger v. Harris*, 401 U.S. 37 (1971). Plaintiff's amended complaint, like his original
15 complaint, does not reveal any extraordinary circumstances which would appear to justify this
16 Court's intervention in his ongoing state court criminal proceedings. (*Id.*) Plaintiff has a venue
17 available to him in which to raise his constitutional claims, and that is the superior court in his
18 pending criminal case. If plaintiff is unable to obtain relief in the trial court, the state appellate
19 courts remain available to him as well.

20 CONCLUSION

21 For the foregoing reasons, this Court recommends that this action be dismissed without
22 prejudice, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), for failure to state a cognizable ground for
23 relief. A proposed order accompanies this Report and Recommendation.

This Report and Recommendation is not an appealable order. Thus, a notice of appeal seeking review in the Court of Appeals for the Ninth Circuit should not be filed until the assigned District Judge acts on this Report and Recommendation.

DATED this 28th day of November, 2016.

James P. Donohue

JAMES P. DONOHUE
Chief United States Magistrate Judge